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The Honorable Joan M. Azrack
United States District Judge
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: *Carvant Financial LLC v. Carvana, LLC* (No. 2:21-cv-05136-JMA-LGD)

Dear Judge Azrack:

In advance of the pre-motion conference scheduled for August 23, 2022, we respectfully request that Your Honor consider the letter attached as Exhibit A hereto containing an additional ground under which Carvana seeks permission to file a motion to dismiss. We have conferred with counsel for the plaintiff. Without conceding the issue and provided they have adequate opportunity to respond, they have no objection to our submission of this additional argument.

We apologize for not including this argument in our April 7, 2022 pre-motion letter. We were alerted to this additional constitutionality argument via an amicus brief filed by Harvard Professor Rebecca Tushnet (and others) in a different case (*Vans, Inc. v. MSCHF Product Studio, Inc.*, Case No. 1:22-cv-02156 (S.D.N.Y.)), which was filed after we filed the pending pre-motion letter.

Respectfully,

/s/ Marjorie J. Pearce

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